## REMARKS / ARGUMENTS

Upon entry of this amendment, the pending claims are claims 10-11, 23-24, and 34. Claims 10-11, 23, and 34 are amended. Support for the amendment to claim 23 may be found in the specification generally at page 64, line 4, through page 65, line 23. Specific support for the term "humanized antibody" and the phrase "antibody selected from a phage display library" may be found at page 64, lines 5 and 8; page 64, line 29 through page 65, line 2; page 65, line 15-17; and page 65, lines 20-23. Support for the amendments to claims 10-11 and 34 may be found in the previous set of claims and in the specification generally. The Applicant has canceled claims 2-4, 9, and 82-83.

**Sequence Disclosures**

> The Examiner asserts that this application fails to comply with the requirements under 37 C.F.R. §1.821, *et seq.*, based upon the presence of a consensus sequence identified in Figure 18 of the application, but not presented in the sequence listing.

The Applicant respectfully disagrees. The "sequence" referred to by the Examiner in Figure 18 is a representation of homology between the mouse and human resistin amino acid sequences, and is not itself a "sequence" under 37 C.F.R. §1.821, *et seq.* As provided in MPEP §2422.02 (referring to 37 C.F.R. §1.821(b)),

> In view of the fact that many significant sequence characteristics may only be demonstrated by a figure, the exclusive conformance requirement of this section may be relaxed for drawing figures . . .
>
> Further, the similarity or homology between/among sequences **can only be depicted in an effective manner in a drawing figure.**
>
> [emphasis added]



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In addition, MPEP §2423.03 (referring to 37 C.F.R. §1.822(e) relating to the presentation of hybrid and gapped sequences) provides:

> A "gap" for the purpose of this section is **not intended** to embrace a gap or gaps that is/are introduced into the presentation of otherwise continuous sequence information in, ***e.g.***, **a drawing figure, to show alignments or similarities with other sequences.**
>
> [emphasis added]

The "sequence" referred to by the Examiner is merely an illustrative representation of the homology between the mouse and human resistin amino acid sequences, which are referenced as SEQ ID NOS: 2 and 4 in the amended Brief Description of the Drawings (*see* Applicant's amendment dated July 6, 2005). Under MPEP §2422.02, the USPTO acknowledges that the similarity or homology between/among sequences can only be depicted in an effective manner in a drawing figure. Further, such a consensus sequence could not be presented under 37 C.F.R. §1.822(e), as such consensus sequences are not considered "gap" sequences under MPEP §2323.03.

In view of the above, the Applicant asserts that the present application fully complies with the provisions of 37 C.F.R. §1.821, *et seq.*, as interpreted by the USPTO in the Manual of Patent Examining Procedure. Accordingly, the Examiner is respectfully requested to reconsider and withdraw this objection.

<u>35 U.S.C. §112, second paragraph</u>

> The Examiner asserts that the term "synthetic" in reference to a synthetic antibody renders Claim 23 unclear. Further, the Examiner asserts that by presentation of "synthetic antibody" in a Markush group with a monoclonal or a polyclonal antibody, the term "synthetic antibody" is clearly not a monoclonal or a polyclonal antibody.

The Applicant respectfully disagrees with the Examiner's assertion that the term "synthetic" is unclear. However, in an effort to place the application in condition for allowance, the Applicant has amended claim 23 to reflect an antibody selected from a polyclonal antibody, a monoclonal antibody, a humanized antibody, and an antibody selected from a phage display library. As indicated above, the term "humanized antibody" and the phrase "antibody selected from a phage display library" are fully supported by the originally filed specification. Further, one of skill in the art would understand the full scope of these terms based upon the text of the specification spanning pages 63 through 65.

The Applicant also respectfully disagrees with the Examiner's assertion that the presence of the terms within a Markush group must be mutually exclusive.

MPEP §2173.05(h)(I) provides:

> The mere fact that a compound may be embraced by more than one member of a Markush group recited in the claim does not necessarily render the scope of the claim unclear. For example, the Markush group, "selected from the group consisting of amino, halogen, nitro, chloro and alkyl" should be acceptable even though "halogen" is generic to "chloro".

Accordingly, the terms "polyclonal antibody" and "monoclonal antibody" may properly overlap with the previously used term "synthetic antibody", as well as with a "humanized antibody" and an "antibody selected from a phage display library", as presently encompassed in claim 23. For example, a "monoclonal antibody" may be an "antibody selected from a phage display library". In view of the above, the Applicant asserts that Claim 23 as presently amended is clear as read by one of skill in the art.



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> The Examiner asserts that the word "an" in line 2 of Claim 34 renders the claim unclear as to whether the phrase "fragment thereof" refers to the antibody of the resistin polypeptide.

In view of the amendment made to claim 34, which removed the phrase "fragment thereof", the Examiner's rejection is rendered moot. The Applicant respectfully requests that the Examiner reconsider and withdraw the above rejections under 35 U.S.C. §112, second paragraph.

**35 U.S.C. §112, first paragraph**

> The Examiner has rejected claims 2-4, 9-11, 23, 24, 34, 82, and 83 under 35 U.S.C. §112, first paragraph, as allegedly lacking enablement.

The Applicant respectfully disagrees. However, in an effort to place the application in condition for allowance, Applicant has amended claim 34 consistent with the Examiner's indication of allowable subject matter. Accordingly, the Examiner's rejection is rendered moot.

In view of the above amendment and these remarks, the Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

**35 U.S.C. §102(b)**

> The Examiner has rejected claims 2-4, and 9-11 under 35 U.S.C. §102(b) as allegedly lacking novelty over Ofei, F., *et al.*, Diabetes. July 1996; 15:881-885 ("Ofei"). The Examiner argues solely that Ofei describes an anti-TNFα antibody that can allegedly be considered to bind a resistin encoded by a nucleic acid that shares at least about 30% sequence identity with a nucleic acid encoding a resistin, or binds to a resistin that shares at least about 30% sequence identity with the sequence of SEQ ID NO:2 or SEQ ID NO:4.

Without addressing the merits of the rejection, Applicant has amended claims 10-11 and 34 and canceled claims 2-4 and 9 consistent with the Examiner's indication of allowable subject matter at page 3, paragraph 6 of the Office Action dated August 3,



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2005. The Applicant's claims now describe an antibody that specifically binds a resistin polypeptide defined as having the amino acid sequence of SEQ ID NO:2 or SEQ ID NO:4. An anti-TNFα antibody that may bind to an amino acid sequence that shares at least about 30% sequence identity with the sequence of SEQ ID NO:2 or SEQ ID NO:4 does not anticipate the Applicant's amended claims. Accordingly, the Examiner's rejections are rendered moot.

The Applicant reserves the right to address the merits of this rejection in a later filed continuation or divisional application.

In view of the above amendments and these remarks, the Applicant respectfully requests that the Examiner reconsider and withdraw all outstanding objections and rejections and permit the above pending claims to pass to issue in due course.

The Director is hereby authorized to charge any deficiency in any fees due with the filing of this paper, or credit any overpayment in any fees, to our Deposit Account, Number 08-3040.

Respectfully submitted,

HOWSON AND HOWSON
Attorneys for Applicants

By Mary E. Bak

Mary E. Bak
Registration No. 31,215
Spring House Corporate Center
Box 457
Spring House, PA 19477
(215) 540-9200 (p)
(215)-540-5818 (f)



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